

OLL#85-1055

MEMORANDUM FOR: Director of Central Intelligence

FROM: Director, Office of Legislative Liaison

SUBJECT: Inclusion of Leaks Legislation in the
Intelligence Authorization Process

1. You have requested a brief summary concerning the history behind the present inclusion of a leaks provision in the 1986 Intelligence Authorization Bill. It should be noted that the inclusion of a leaks provision in an intelligence authorization bill is not extraordinary or unprecedented. A leaks provision was approved for inclusion in the FY 84 bill by Office of Management and Budget (OMB), with no objection offered by the Department of Justice (DOJ). For reasons unrelated to the propriety of including such a leaks provision in an intelligence authorization bill, the provision was not included in the bill submitted to Congress that year.

2. Attached is Section 401 of the 1984 Intelligence Authorization Bill, which Section contains an amendment to Title 18, United States Code, providing criminal penalties for willful unauthorized disclosures of classified information by Federal employees and others with authorized access to such information. This provision was taken directly from the interagency "Willard Report" which set forth various recommendations on measures to be taken to combat unauthorized disclosures. While this provision is somewhat different from our current leaks proposal, in that it does not include certain affirmative defenses, the two provisions are very similar and both provide straightforward criminal penalties for unauthorized disclosures of classified information by anyone with authorized access to it. Discussions concerning this provision were held by representatives from this Agency with both the DOJ and OMB. Justice did not indicate any objection to the inclusion of a leaks provision in the Intelligence Authorization Bill at that time, and in fact supported such inclusion subject to a number of technical substantive amendments. In a number of similar meetings held with OMB officials, OMB did not indicate that the intelligence

authorization process was an inappropriate vehicle through which to submit a leaks provision to Congress, and in fact specifically approved such inclusion in the 1984 bill. While OMB formally approved inclusion of a leaks provision in the 1984 bill, it was decided by senior Agency management at that time, that it would be inadvisable to place the DCI in the lead position on this issue in the absence of clear Administration support for this provision.

3. During the 1985 intelligence authorization process, a similar leaks provision was included in the early drafts of the bill circulated for comment by interested Agency components and other Intelligence Community agencies. The bill that was transmitted to OMB for Administration clearance did not include a leaks provision, however, given the existing atmosphere on the Hill with respect to NSDD 84, and out of concern that a possible leak of this proposal during the OMB coordination process could result in considerable unfavorable media exposure and criticism of the Agency as the sponsor of this initiative.

4. With respect to this year's authorization bill, the initial drafts of the bill circulated for agency comment did not include a leaks provision as we understood that an interagency group headed by Justice was to formulate a leaks provision which would be submitted to Congress with full Administration backing. When it became apparent that this interagency group was taking no action and that a proposal was unlikely to be forthcoming in the near future, a decision was made to include a leaks provision in the 1986 Intelligence Authorization Bill. A final round of comments was sought from interested agencies concerning the amended bill before it was finally submitted to OMB for Administration clearance. Of the comments received by the Agency, DOJ was the only agency to object to the inclusion of the provision in the authorization bill. As you know, this objection was repeated yesterday by Justice at our meeting at OMB. At this same meeting, OMB voiced similar concerns about submitting a leaks provision as part of the authorization bill process.

5. I will be happy to answer any further questions you may have on this matter.

/s/Charles A. Briggs

Charles A. Briggs

Attachment
As Stated

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